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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1207

RIN 2590-AA67

Minority and Women Inclusion Amendments

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing to amend its regulation on minority and women inclusion by requiring the Federal Home Loan Banks (Banks), and the Office of Finance to include in the contents of their annual reports certain demographic information related to their boards of directors as well as a description of their related activities during the reporting year.

DATES: Written comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit your comments, identified by Regulatory Information Number (RIN) 2590-AA67, by any of the following methods:

- Agency website: www.fhfa.gov/open-for-comment-or-input.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at

RegComments@fhfa.gov to ensure timely receipt by the agency. Please include Comments/RIN 2590-AA67 in the subject line of the message.

- Courier/Hand Delivery: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA67, Federal Housing Finance Agency, 400 Seventh Street, SW., Eighth Floor, Washington, DC 20024. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. to 5 p.m.
- U.S. Mail, United Parcel Service, Federal Express or Other Mail Service: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA67, Federal Housing Finance Agency, 400 Seventh Street, SW., Eighth Floor, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Nancy Burnett, Acting Associate Director, Office of Minority and Women Inclusion, (202) 649-3017; or Karen Lambert, Associate General Counsel, (202) 649-3094 (not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street, SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed regulation, and will develop final regulations after taking all comments into consideration. Copies of all comments received will be posted without change on the FHFA web site at

<http://www.fhfa.gov>, and will include any personal information you provide, such as your name, address, email address, and telephone number. Copies of all comments received will be made available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, 400 Seventh Street, SW., Eighth Floor, Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649-3804.

II. Background

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) (Safety and Soundness Act) to establish FHFA as an independent agency of the Federal government. HERA transferred the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight over the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises), and of the Federal Housing Finance Board over the Banks and the Bank System's Office of Finance to FHFA.¹ The Enterprises and the Banks are collectively referred to as the regulated entities.

The Safety and Soundness Act provides that FHFA is headed by a Director with general supervisory and regulatory authority over the regulated entities. FHFA is charged, among other things, with overseeing the prudential operations of the regulated entities. FHFA is also charged with ensuring that the regulated entities: operate in a safe and sound manner including maintenance of adequate capital and internal controls; foster

¹ For Fannie Mae and Freddie Mac, the term "regulated entity" includes any affiliates thereof; for the Banks, the term "regulated entity" only includes the Banks. See 12 U.S.C. 4502(20).

liquid, efficient, competitive, and resilient national housing finance markets; comply with the Safety and Soundness Act, and the respective authorizing statutes of the regulated entities; and carry out their missions through activities authorized and consistent with the Safety and Soundness Act and their authorizing statutes; and, that the activities and operations of the regulated entities are consistent with the public interest.²

Section 1116 of HERA amended section 1319A of the Safety and Soundness Act, 12 U.S.C. 4520, to require, in part, that the regulated entities establish or designate an office to carry out the requirements of an Office of Minority and Women Inclusion (OMWI). That office is responsible for: all matters relating to diversity in the entity's management, employment, and business activities; the development and implementation of standards and procedures to promote diversity in all business and activities of the regulated entity; and the submission of an annual report to FHFA detailing the actions taken to promote diversity and inclusion. Furthermore, 12 U.S.C. 1833e, and Executive Order 11478, generally require FHFA and the regulated entities to promote equal opportunity in employment and contracting.

FHFA has adopted regulations to implement section 1116 of HERA, 12 U.S.C. 1833e, and Executive Order 11478, and to set forth the minimum requirements for the regulated entities' diversity programs and reporting requirements. Those regulations, which are located at 12 CFR part 1207, require each regulated entity and the Office of Finance to establish an OMWI office, or to designate another office, that would be responsible for fulfilling the entity's OMWI responsibilities under the statute and regulations. Each of these entities must implement policies and procedures to ensure, to the maximum extent possible in balance with financially safe and sound business

² Section 1102 of HERA, 122 Stat. 2663 and 2664.

practices, the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses in all business and activities and at all levels of the regulated entity and the Office of Finance, including in management, employment, procurement, insurance, and all types of contracts.³ These policies also must encourage the consideration of diversity in nominating or soliciting nominees for positions on boards of directors and engage in recruiting and outreach directed at encouraging individuals who are minorities, women and individuals with disabilities to seek or apply for employment with the regulated entity or the Office of Finance.⁴

Part 1207 also requires each regulated entity and the Office of Finance to submit to the FHFA Director, on or before March 1 of each year, a detailed annual report summarizing its activities during the reporting year (January 1 through December 31 of the preceding year) to comply with the OMWI regulatory requirements.⁵ To that end, each regulated entity and the Office of Finance is required to submit as part of its annual report the EEO-1 Employer Information Report (Form EEO-1 used by the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs to collect certain demographic information) or similar report.⁶ The Form EEO-1 pertains only to broad occupational categories of employees such as executives/senior level officials, first/mid-level officials and managers, professionals, technicians, and other employee job categories, and those employees' gender, race, and ethnicity classifications.⁷

³ 12 CFR 1207.21(b).

⁴ 12 CFR 1207.21(b)(5).

⁵ 12 CFR 1207.23.

⁶ 12 CFR 1207.23(b)(1).

⁷ The race and ethnicity categories used on the Form EEO-1 are: Hispanic or Latino; White (Not Hispanic or Latino); Black or African American (Not Hispanic or Latino); Native Hawaiian or Other Pacific Islander

In addition, part 1207 provides that the FHFA Director has broad enforcement authority in that he or she may enforce this regulation and standards issued under it in any manner and through any means within his or her authority, including through identifying matters requiring attention, corrective action orders, directives, or enforcement actions under 12 U.S.C. 4513b and 4514.⁸ To that end, the FHFA Director may conduct examinations of a regulated entity's or the Office of Finance's activities under and in compliance with this part pursuant to 12 U.S.C. 4517.⁹

The Bank System (System) was created by the Federal Home Loan Bank Act of 1932 (Bank Act) as another GSE to support mortgage lending and related community investment. It is composed of 12 Banks, Bank member financial institutions, and the System's fiscal agent, the Office of Finance. The Banks fulfill their statutory mission primarily through providing secured loans (advances) to their members.

Section 1202 of HERA altered the composition of the Banks' boards of directors by amending section 7 of the Bank Act (12 U.S.C. 1427) to require the management of each Bank to be vested in a board of 13 directors, or such other number as the Director determines appropriate, and that each board be comprised of both a majority of member directors and at least 40% of independent directors. Each member of the board of directors is elected by plurality vote of the members, in accordance with FHFA regulations. Previously, section 7 of the Bank Act required each Bank's board of directors to be comprised of 14 directors, 8 of whom were elected by members and 6 of whom were appointed by the former Federal Housing Finance Board.

(Not Hispanic or Latino); Asian (Not Hispanic or Latino); American Indian or Alaska Native (Not Hispanic or Latino); Two or More Races (Not Hispanic or Latino).

⁸ 12 CFR 1207.24.

⁹ Id.

The Office of Finance is a joint office of the Banks, the primary responsibility of which is to act as their agent in offerings, issuing, and servicing the consolidated obligations that are issued to fund the operations of the Banks. The Office of Finance also prepares the combined financial reports for the System, functions as its fiscal agent, and performs certain duties relating to the Financing Corporation and Resolution Funding Corporation, respectively.¹⁰ The board of directors of the Office of Finance consists of 17 members, which includes the 12 Bank presidents, who serve ex officio, and five independent directors. The independent directors must each be a citizen of the United States, and not have any material relationship with a Bank or the Office of Finance. As a group, the independent directors must have substantial experience in financial and accounting matters.¹¹ The initial independent directors were appointed by FHFA, however, once their terms expire or positions otherwise become vacant, the succeeding independent directors must be elected by majority vote of the Office of Finance board of directors.¹²

III. Analysis of Proposed Rule

The current regulations require the regulated entities and the Office of Finance to have policies that, among other things, encourage the consideration of diversity in nominating or soliciting nominations for positions on the boards of directors. The regulations also require the annual OMWI report to include the institution's Form EEO-1 as well as the demographic information of those applying for employment, hired, separated, or promoted during the reporting year.

¹⁰ 12 CFR 1273.3.

¹¹ 12 CFR 1273.7(a).

¹² 12 CFR 1273.7(d); See 75 FR 23152, 23163 (May 3, 2010).

The proposed rule would revise the existing reporting requirements to require each Bank and the Office of Finance to include in the contents of its annual report data showing the demographic status of its respective board members, which is to be provided without any personally identifiable information. Such data would be obtained by each Bank and the Office of Finance through a request for information of its board members who could then voluntarily choose to self-identify using the same demographic classifications as those used for the Form EEO-1.

The current rule does not require the regulated entities and the Office of Finance to collect demographic data about the boards of directors. That is because the occupational or job categories included on the Form EEO-1 pertain only to employees and the members of the board of directors of each institution are not employees.

As conservator of Fannie Mae and Freddie Mac, FHFA is involved in the selection of their board members. At this time, FHFA does not believe that it is necessary to consider promulgating regulations pertaining to the Enterprises with respect to these requirements.

Requiring the Banks and the Office of Finance to report on the demographic profile of their boards of directors is a logical extension of the current regulation, which requires the development, implementation, and maintenance of policies and procedures for promoting board diversity. The aggregate demographic data related to the boards of directors of each Bank and the Office of Finance would establish a baseline to analyze future trends, and could be used to assess the effectiveness of the strategies developed by the Banks and the Office of Finance related to promoting demographic board diversity.

In addition, the proposed rule will require the Banks and the Office of Finance to include in the contents of their annual reports a description of their outreach activities and strategies related to promoting demographic diversity in nominating or soliciting nominees for positions on boards of directors. By requiring the submission of this information, the proposed rule would better enable FHFA to determine the effectiveness of those policies and procedures in encouraging demographic diversity in the processes of nominating and soliciting nominees for positions on boards of directors. Currently, § 1207.22(c) requires each Bank and the Office of Finance to submit an annual report to FHFA on or before March 1 of each year, reporting on the period of January 1 through December 31 of the preceding year. The proposed amendment to § 1207.22(c) would require the board demographic data and description of outreach activities and strategies related to promoting the demographic diversity of board nominees to be included in the contents of the annual report submitted to FHFA beginning with the report required to be submitted by March 1, 2015.

Proposed § 1207.23(b)(9)(i) would require each Bank and the Office of Finance to include in the contents of its annual report the aggregate number of individuals on its board of directors by demographic classification. The proposed regulation would require each Bank and the Office of Finance to collect and report the data using the same classifications as those on the Form EEO-1. The directors of each Bank and the Office of Finance would be provided an opportunity to voluntarily self-identify their demographic classification without personally identifiable information.

In sending the request to each board member, FHFA expects the Banks and the Office of Finance to inform their board members about the voluntary nature of the data

collection and of its intended uses and purposes. The Banks and the Office of Finance are expected to report aggregate results only of their respective data collections based on the board members' voluntary demographic self-identification.

Proposed § 1207.23(b)(9)(ii) would require the Banks and the Office of Finance to include in the contents of their annual reports a description of their outreach activities and related strategies executed during the preceding year to promote diversity in nominating or soliciting nominees for positions on their respective boards of directors.

The proposed amendment to re-designated § 1207.23(b)(10) would clarify that the Banks and the Office of Finance are to include in their annual report comparisons of the data required to be submitted by proposed paragraph (b)(9).

IV. Consideration of Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act, as amended by HERA, requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks': cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; joint and several liability; and any other differences the Director considers appropriate. See 12 U.S.C. 4513(f). In preparing this proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the proposed rule does not implicate any of the above factors. Nevertheless, FHFA requests comments on whether these factors should result in a revision of the proposed amendment as it relates to the Banks.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) requires that FHFA consider the impact of paperwork and other information collection burdens imposed on the public.¹³ Under the PRA and the implementing regulations of the Office of Management and Budget (OMB), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid control number assigned by OMB.¹⁴ This proposed rule contains a proposed new information collection requirement, which is described below. As required by the PRA, FHFA has submitted an analysis of the proposed collection of information contained in this proposed rule to OMB for review.¹⁵

Summary: Under proposed § 1207.23(b)(9)(i), each Bank and the Office of Finance would be required to request annually that each member of its board of directors provide, on a voluntary basis, self-identification of his or her demographic classification (using the same minority and gender classifications as those used on the Form EEO-1), without including personally identifiable information. Proposed § 1207.23(b)(9) and proposed § 1207.22(c) would require that each Bank and the Office of Finance submit the baseline board demographic information collected to FHFA as part of the annual report it is already required to submit under existing part 1207.

Use: FHFA would use the information collected under proposed § 1207.23(b)(9)(i) to assess the effectiveness of the policies and procedures that each Bank and the Office of Finance is required to implement to promote demographic diversity in all of its business and activities “at all levels” and, specifically, to encourage

¹³ See 44 U.S.C. 3507(a) and (d).

¹⁴ See 44 U.S.C. 3512(a); 5 CFR 1320.8(b)(3)(vi).

¹⁵ See 44 U.S.C. 3507(d).

demographic diversity in the nomination and solicitation of nominees for members of its boards of directors. FHFA would also use the information to establish a baseline to analyze future trends related to the demographic diversity of the boards of directors of the Banks and the Office of Finance.

Respondents: Respondents would be the approximately 210 individuals serving on the boards of directors of the regulated entities and the Office of Finance in any given year.

Frequency: The information would be collected annually.

Annual Burden Estimate: FHFA estimates the total annualized hour burden for all respondents to the proposed information collection to be 21 hours. FHFA estimates that an average of 210 board directors will provide information annually and that each response will take approximately 0.1 hours on average (210 respondents x 0.1 hours per response = 21 hours). There will be no annualized cost to the Federal government.

Comment Request: FHFA will accept written comments concerning the accuracy of the burden estimates and suggestions for reducing the burden at the address listed above. Comments may also be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for Federal Housing Finance Agency, Room 10102, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; Fax: (202) 395-6974; or Email: OIRA_Submission@omb.eop.gov.

Written comments are requested on: (1) Whether the proposed collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and

clarity of the information collected; and (4) ways to minimize the burden of the proposed collection of information on board respondents, including through the use of automated collection techniques or other forms of information technology.

Individuals and organizations may send comments on the proposed information collection requirement by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act.

The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small entities because the regulation is applicable only to the regulated entities and the Office of Finance, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1207

Discrimination, Diversity, Equal employment opportunity, Government contracts, Minority businesses, Office of Finance, Outreach, Regulated entities.

Authority and Issuance

For the reasons stated in the SUPPLEMENTARY INFORMATION, and under the authority of 12 U.S.C. 4526, FHFA proposes to amend Subpart C of part 1207 of title 12 of the Code of Federal Regulations as follows:

Part 1207—MINORITY AND WOMEN INCLUSION

1. The authority citation for part 1207 continues to read as follows:

Authority: 12 U.S.C. 4520 and 4526; 12 U.S.C. 1833e; E.O. 11478.

Subpart C—Minority and Women Inclusion and Diversity at Regulated Entities and the Office of Finance

2. Amend § 1207.22 by adding a new sentence at the end of paragraph (c) to read as follows:

§ 1207.22 Regulated entity and Office of Finance reports.

* * * * *

(c) * * * The data required to be reported by § 1207.23(b)(9) herein shall be included in each annual report beginning with the report required by March 1, 2015.

* * * * *

3. Amend § 1207.23 as follows:

- a. Redesignate paragraphs (b)(9) through (19) as paragraphs (b)(10) through (20);

and

- b. Add new paragraph (b)(9) and amend newly redesignated paragraph (b)(10) to read as follows:

§ 1207.23 Annual reports—format and contents.

* * * * *

(b) * * *

(9)(i) Data showing for the reporting year by minority and gender classification, the number of individuals on the board of directors of each Bank and the Office of Finance—

(A) Using data collected by each Bank and the Office of Finance through an information collection requesting each director's voluntary self-identification of his or her minority and gender classification without personally identifiable information;

(B) Using the same classifications as those on the Form EEO-1; and

(ii) A description of the outreach activities and strategies executed during the preceding year to promote diversity in nominating or soliciting nominees for positions on boards of directors of the Banks and the Office of Finance;

(10) A comparison of the data reported by Fannie Mae and Freddie Mac under paragraphs (b)(1) through (8) of this section, and by the Banks and the Office of Finance under paragraphs (b)(1) through (9) of this section, to such data as reported in the previous year together with a narrative analysis;

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Dated: June 12, 2014.

Melvin L. Watt,
Director, Federal Housing Finance Agency.

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